

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

In Re ARSENAL MINERALS AND ROYALTY; THE CHANDLER DAVIS TRUST, LESLEE ANN GASSAWAY DAVIS, TRUSTEE, JOINED HEREIN BY NASA ENERGY CORP.

Plaintiffs,

V.

THE CITY OF DENTON,

Defendant.

CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION:

Defendant City of Denton, Texas ("**Defendant**" or "**City**") files this Notice of Removal pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331.

Background

1. September 12, 2014, Plaintiffs Arsenal Minerals and Royalty, the Chandler Davis Trust, Leslee Ann Gassaway Davis, Trustee, and NASA Energy Corp. filed Plaintiff’s Amended Original Petition and Request for Disclosure (the “**Petition**”) in the 431st Judicial District Court of Denton County, Texas in Cause No. 14-07262-431, styled *In Re: Arsenal Minerals and Royalty; The Chandler Davis Trust, Leslee Ann Gassaway Davis, Trustee, Joined Herein by NASA Energy Corp. v. The City of Denton, Texas* (the “**State Court Action**”).

Removal is Proper

2. This Court has original jurisdiction over the claims asserted against Defendant under 28 U.S.C. § 1441(a) because some of the relief sought against City by Plaintiffs arises

under the laws of the United States within the meaning of 28 U.S.C. § 1331. Specifically, Plaintiffs make claims for illegal takings under the 5th Amendment to the Constitution of the United States. Those federal takings claims are also contained in Plaintiff's First Amended Petition which was filed with the state court on September 22, 2014, but never served on Defendant. Therefore, removal is proper under 28 U.S.C. § 1441(a).

3. Defendant City was first served a copy of the Petition on September 12, 2014. This Notice of Removal is filed within thirty (30) days after the first date received service of the Petition in accordance with 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). True and correct copies of all process, pleadings, orders and other documents filed in the state court, a certified copy of the docket sheet from the State Court Action and all other information required by Local Rule CV-81 are included with the Index which is attached hereto as **Exhibit "1."**

4. This Court also has supplemental jurisdiction over all other claims and parties in the State Court Action pursuant to 28 U.S.C. § 1367, as these claims and parties arise under this Court's original jurisdiction and in the same case or controversy. *See State Nat'l Ins. Co. v. Yates*, 391 F.3d 577 (5th Cir. 2004).

5. No party has demanded a jury in the State Court Action.

6. The United States District Court for the Eastern District of Texas, Sherman Division, is the proper venue under 28 U.S.C. § 1446(a) because it presides over the district and division within which the State Court Action was filed.

7. Defendant will serve written notice of this removal on the Plaintiff as described in the attached certificate of service.

8. Defendant has properly filed a copy of this Notice of Removal with the clerk in the State Court Action pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant the City of Denton prays that the above entitled action be removed from the 431st Judicial District Court, Denton County, Texas, to this Honorable Court.

SIGNED this 6th day of October, 2014.

Respectfully submitted,

/s/ Terry D. Morgan

Terry D. Morgan

State Bar No. 14454075

tmorgan@msstxlaw.com

TERRY MORGAN & ASSOCIATES, P.C.

8080 N. Central Expressway, Suite 1300

Dallas, Texas 75206

(214) 740-9944

(214) 888-3327 (fax)

James W. Morris, Jr.

State Bar No. 14487600

jmorris@msstxlaw.com

MORRIS, SCHORSCH & STAPLETON, P.C.

8080 N. Central Expressway, Suite 1300

Dallas, Texas 75206

(214) 888-3324

(214) 888-3327 (fax)

Anita Burgess

State Bar No. 03379600

Jerry Drake

State Bar No. 060107500

Aaron Leal

State Bar No. 24048051

CITY OF DENTON, TX

215 E. McKinney Street

Denton, TX 76201

(940) 349-8200

(940) 382-7923 (Fax)

Attorneys for Defendant

CITY OF DENTON, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2014, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record, all of whom have consented in writing to accept this Notice as service of this document by electronic means. Pursuant to Local Rule CV-5, this constitutes service on all attorneys of record.

/s/ Terry D. Morgan

Terry D. Morgan